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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1946**

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# No. 1311

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OSCAR NELSON,

*Petitioner,*

*vs.*

THE UNITED STATES

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**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.**

ROBERT A. LITTLETON,
*Counsel for petitioner.*

# INDEX

## Subject Index



## Table of Cases Cited

STATUTES CITED



REGULATIONS

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## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

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*To the Honorable, the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States:*

The undersigned, on behalf of the above named petitioner, prays that a writ of certiorari issue to review the judgment of the Court of Claims of the United States entered January 6, 1947, in the above entitled proceeding, docketed therein as No. 45931, on which a motion for a new trial was overruled by Order entered March 3, 1947.

### Opinion

The opinion of the Court of Claims of the United States is printed at page 11 of the record. The judgment entered

and order overruling a motion for a new trial appear at page 32 of the record.

## Jurisdiction

The judgment of the Court of Claims of the United States was entered January 6, 1947 and motion for a new trial was overruled by Order entered March 3, 1947. The jurisdiction of this Court is invoked under the provisions of Section 288(b), Title 28 USCA.

## Questions Presented

1. Is the "unification of properties of two or more corporations" by transfers that are to be treated as one transaction, synonymous with the term "consolidation", when the requirements of Section 203(b) (4) of the Revenue Act of 1926 *are met;*

2. Should transfers of property by two or more corporate persons as one transaction within the meaning of Section 203(b) (4) of the Revenue Act of 1926, be treated differently for tax purposes than transfers of property by two or more individual persons as one transaction, when the requirements of the statute *are not met;*

3. Is the phrase "substantially in proportion" as used in Section 203(b) (4) of the Revenue Act of 1926 synonymous with the phrase "substantially all" as used in Section 203(h) (1) (A) of said Act; or

4. May the latter be applied in the case of transfers by two or more corporate persons as one transaction where the former is lacking in the case of each transfer?

## Statutes Involved

The statute involved in this case is the Revenue Act of 1926; and the applicable provisions of the statute are Sec-

tions 203(b) (4), (d) (1) and (2), and (h) (1) (A) and (B), which read as follows:

"(b) (4) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange."

* * * * * *

"(d) (1) If an exchange would be within the provisions of paragraph (1), (2), or (4) of subdivision (b) if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

"(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property."

* * * * * *

"(h) (1) The term 'reorganization' means (A) a merger or consolidation (including the acquisition by

one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the *properties* of another corporation), or (B) a transfer by a corporation of all or a part of its *assets* to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (C) a recapitalization, or (D) a mere change in identity, form, or place of organization, however effected."

**Regulations**

The Regulation involved in this case is found in Regulations 69; and the pertinent provision thereof is Article 1572(c), which reads as follows:

"Art. 1572. *Exchanges of property.*—In the following cases no gain or loss is recognized:

* * * * * *

"(c) If property, real, personal, or mixed, is transferred to a corporation (1) by one person solely in exchange for stock or securities in such corporation, and immediately after the exchange such person is in control of the corporation, or (2) by two or more persons solely in exchange for stock or securities in such corporation, and if immediately after the exchange such persons are in control of the corporation, and the amount of stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange. See Section 203 (i) and article 1577 for definition of 'control'."

The provisions of Article 1572 of Regulations 69 in force under Section 203(b) (4) of the Revenue Act of 1926, have been somewhat enlarged in their meaning and purpose—

but not to change their character—by Section 29.112 (b) (5)-1 of Regulations 111, viz:

> "As used in section 112 (b) (5), the phrase 'one or more persons' includes *individuals, trusts or estates, partnerships and corporations* (*see section 3797*); and to be in 'control' of the transferee corporation such person or persons must own immediately after the transfer stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of such corporation. (See section 112 (h).) The phrase 'immediately after the exchange' does not necessarily require simultaneous exchanges by two or more persons, but comprehends a situation where the rights of the parties have been *previously* defined and the *execution of the agreement proceeds with an expedition consistent with orderly procedure.*"

There is no change in the wording of the statute as between the language of Section 203 (b) (4) of the Revenue Act of 1926 and Section 112(b) (5) of the Internal Revenue Code.

**Statement of Case**

The petitioner and taxpayer in this case was one of two persons who, at the suggestions of the executive officers of twelve solvent corporations and the members of a partnership, became a committee for the incorporators of the United Carbon Company to submit to each of said twelve corporate persons and a partnership *similar* written proposals that after the United Carbon Company was incorporated it would acquire from each of them by purchase the type, character and kind of property designated in such proposals in exchange for stock of the United Carbon Company (R. 14, 15).

The proposals submitted to the companies and partnership were similar in every essential respect to that submitted to Cosmos Carbon Company, one of the said twelve corporate persons. The proposals read as follows:

"Charleston, W. Va.
February 1, 1925.

To COSMOS CARBON COMPANY, a corporation,
*Union Building, Charleston, W. Va.*

GENTLEMEN: In behalf of the proposed incorporators of the United Carbon Company, a corporation, to be forthwith organized under the laws of the State of Delaware, the undersigned Committee for said proposed incorporators, hereby offers to purchase for and on behalf of said United Carbon Company, when organized, all of the manufactured carbon black of Cosmos Carbon Company on hand in warehouses and factories and on consignment at the price of 6¢ per pound F.O.B. plant, less all commissions and all other sales expense assumed, and less the difference between 6¢ F.O.B. plant and the sale price for carbon black under any contract taken over, if less than 6¢ F.O.B. plant, upon inventory, taken as of the 14th day of February, 1925, to be paid for in cash. The undersigned Committee hereby also offers to purchase for and on behalf of the said United Carbon Company, when organized, all of the bags, boxes, twine and other material and equipment of Cosmos Carbon Company on hand on said date, used or for use in the packing and shipping of said carbon black, at the inventory price on said date, to be paid also in cash.

"The undersigned Committee for said proposed incorporators further hereby offers to purchase for and on behalf of said United Carbon Company, when organized, all of the carbon black manufacturing plants, warehouses, factories, gasoline plants and other plants and factories, plant sites and other real estate, together with all of the appurtenances thereunto belonging, oil and gas leases and leasehold estates, sur-

face leases and leasehold estates, oil and gas wells, and all equipment used or for use in, or in connection with, such wells, as well as in connection with the operation thereof, dwellings, offices and other structures, machinery, railroad tracks and sidings, pipe lines, tanks, meters, all material and equipment of every kind and character used or for use in connection with any of the foregoing property, and used or for use in connection with the business of producing oil and gas and manufacturing carbon black gasoline and other by-products of oil and gas, gas supply contracts, carbon black and gasoline sales contracts, all other contracts of whatever kind and character, office furniture and equipment, and in general all of the property, real, personal and mixed, of Cosmos Carbon Company, whether hereinbefore specifically enumerated or not, except the carbon black and packing and shipping equipment above mentioned, its corporate franchise, cash and notes, bills and accounts receivable, and except the property formerly owned by Cumberland Carbon Company and recently transferred to Cosmos Carbon Company, by two certain deeds, one from Cumberland Carbon Company and the other from George E. Thomas, Trustee, all of said property to be conveyed, to be free from all liens and encumbrances of every kind and character, for the sum of $899,000.00, to be paid in the seven (7%) percent noncumulative preferred stock of the United Carbon Company, at par, and for the further consideration of the delivery to the Cosmos Carbon Company of Voting Trustees Certificates representing 35,960 fully paid and nonassessable shares of the common stock of the United Carbon Company, having no par value; it being understood that this proposition is made with the understanding that the Cosmos Carbon Company shall join in a Voting Trust Agreement covering the voting of the United Carbon Company's stock for a period of five years.

"This proposition is made for immediate acceptance and to take effect, if accepted, as of the 14th day of February, 1925, with the understanding that there shall

be no diminution in the above enumerated assets of the Cosmos Carbon Company as shown by its statement dated the —— day of ——, 19—, and that the said Cosmos Carbon Company shall continue to be liable for all its debts, and shall protect and save harmless the United Carbon Company from all claims of every kind and character against the Cosmos Carbon Company; also with the understanding that, subject to the provisions above covering the price to be paid for carbon black, all contracts taken over shall be divisible between the seller and purchaser as of February 14, 1925, the seller to have the pro rata benefit and liability under every such contract to and including the said date and the purchaser to have the pro rata benefit and liability thereunder thereafter; also that the purchaser shall be entitled to the gross income and be liable for the expense of operation after the said date.

"This proposition is also made with the understanding that the undersigned Committee shall not be personally bound by reason thereof, but that this proposition is subject to the approval and ratification of the United Carbon Company, when organized.

Very truly yours,

(Signed) Oscar Nelson,
(Signed) A. B. Koontz,
*Committee for the proposed incorporators of the United Carbon Company.*"

The *primary purpose* of the organization of the United Carbon Company was the *unification* of certain properties of each predecessor into a single ownership and the operation thereof as *one trade or business.* The proposals, in the form of an offer of purchase, were duly accepted by the various corporations and a partnership to which submitted; and were later ratified and accepted by the United Carbon Company at a meeting of its first Board of Directors held on February 21, 1925. The charter of the United Carbon Company is dated February 19, 1925. The properties designated in the proposals to be purchased by the

United Carbon Company *in exchange for preferred stock, common stock and cash were transferred* to it by the various corporate persons and a partnership as of February 25, 1925 (R. 17, 18).

The proposals contemplated that the various transfers of property made in pursuance thereof by the twelve corporate persons and a partnership be treated as *one transaction;* and to carry out such purpose of the parties to the proposal, they were required to join in a Voting Trust Agreement covering the voting stock of the United Carbon Company for a period of five years. The Voting Trust Agreement covering the voting stock of United Carbon Company is provided for in the written proposals and was deemed advisable in order to unite the parties together in one transaction by the transfers proposed; and that they act *jointly as well as severally* in making the transfers. To put into effect and carry out the general plan of the written proposal, mutually agreed to, each of the persons who accepted the proposal *transferred property* to the United Carbon Company in exchange for stock as of February 14, 1925; and also delivered to it other property to be paid for in cash (R. 25, 26). The purpose of the transfers was identical with respect to all of the parties accepting the proposal.

The amount of stock received by each of the transferors was *not substantially in proportion* to the direct or legal interest of each in the property prior to the exchange as required by Section 203(b)(4) of the Revenue Act of 1926 (R. 26); and in the case of *United Carbon Company* v. *Commissioner of Internal Revenue,* 90 F. (2d) 43, it was held and adjudicated (on facts that are identical with the facts found by the Court below in this case) that gain or loss is to be recognized in the case of each of the transferors. Moreover, the amount of the stock of the United Carbon Company that was or could be distributed to a stockholder of

each transferor was not *substantially in proportion* to his proprietary interest in the property prior to the exchange. The substantial disproportion found in the case of *United Carbon Company* v. *Commissioner, supra,* prevails with respect to a *proprietary interest* in the property as a necessary corollary.

The petitioner was the owner of a *proprietary interest* in the property of two of the transferor corporate persons to the single transaction related above, in the category of a stockholder; and the Court below finds that it was a part of the plan, as evidenced by the proposals submitted to the twelve corporate persons and a partnership, that the stock received by each in the exchange for property be distributed to the stockholders of the transferors as *liquidating dividends* (R. 23). This makes the individual proprietary owners of the property the *real parties to the transaction.*

Each of the transferor corporate persons retained some portion of their assets; none of them was *merged* into the United Carbon Company—each was required to pay the debts owed by it—and each was required to *retain its corporate franchise* (R. 16). The Natural Gas Products Company, one of the transferor corporate persons, retained and used its corporate franchise until it was later *dissolved* by operation of law on June 24, 1926 (R. 22), and Cosmos Carbon Company, also one of the transferor corporate persons, retained and used its *corporate franchise* until it was later dissolved by operation of law on August 2, 1927 (R. 20). There was no plan for a statutory *merger, consolidation,* or intercorporate *reorganization* of any of the transferor corporate persons, within the meaning of Section 203(h) (1) (A) of the Revenue Act of 1926; and there was no one of the transferor corporate persons or its stockholders who held a controlling interest in the stock of the United Carbon Company *immediately after the exchange,* within the meaning of Section 203(h) (1) (B) of said Act (R. 18).

Some of the transferor corporate persons transferred substantially all of their assets; but that fact is incidental rather than controlling. It is with respect to a proprietary interest in the property of a corporate person that the law is concerned on the subject of *recognizing gain or loss;* and the requirement is that there be a *substantial proportion* in the continuity of a proprietary interest in the property transferred as *one transaction.*

The Court below appears to ignore the fact that the *real owners* of the property were the two or more stockholders of the corporate persons to the antecedent transaction within the meaning of Section 203(b) (4) of the Revenue Act of 1926, and that the *requirements of that Section* were not met so as to make the antecedent transaction in this case a "reorganization" as to all or any of the transferors within the meaning of Section 203(h) (1) (B) of the Revenue Act of 1926. There was no separate plan for the "intercorporate reorganization" of one or more of said corporate persons within the meaning of Section 203(b) (3) of the Revenue Act of 1926; and since the plan of February 1, 1925 *requires* that the various transfers thereunder be treated as *one transaction,* in the category of a consolidation, the separation of them as proposed by the Court below is *legally impossible* under the determination of the Commissioner of Internal Revenue in the case of *United Carbon Company* v. *Commissioner, supra,* that they were to be treated as *one transaction* under the *proportional provisions* of Section 203(b) (4) of the Revenue Act of 1926. The position taken by the respondent in this case was not open or available to the *United Carbon Company* or any of the transferor corporations in the case of *United Carbon Company* v. *Commissioner, supra;* and it is not available to the respondent in this case under the principle of *derivative rights.*

The Court below concedes that there is a *substantial disproportion* within the meaning of Section 203(b) (4) of the Revenue Act of 1926, and that there was no plan for a *distribution* of the stock or money received by any one or more of the corporate persons; but it *infers* the existence of a separate plan for the "inter-corporate reorganization" of some of the transferors because the proprietary owners of the property (as stockholders of the transferors) authorized the transfers. The authorization required was exhausted in the *one transaction* completed thereunder.

The requirement of a "substantial proportion" in the continuity of a proprietary interest in property is *implicit* in the *terms* "merger" or "consolidation" as defined by Section 203(h) (1) (A) or (B) of the Revenue Act of 1926; and it is *specifically* required by the language of Section 203(b) (4) of the Act when there is "one transaction" participated in by two or more corporate persons that has characteristics of a "merger" or "consolidation". In strictness, the completed antecedent transaction in this case cannot be designated as either a "merger" or "consolidation". The judgment of the Court below appears to be in conflict with every other case that has *defined* the term "reorganization" upon facts similar to the facts in this case.

A division of the *antecedent transaction* into separate and specific transfers of an individual character, as to each of the transferors, does not eliminate the *admitted existence* of a *substantial disproportion* in the amount of stock received by each; and division may be resorted to only as an *evasion* of tax upon the *recognizable* gain, as provided by Section 203(a) of the Revenue Act of 1926. It is the respondent who urges the *evasion* of a tax on the gain held to be recognizable in the case of *United Carbon Company* v. *Commissioner, supra;* and that question makes the issue in this case grave and of public importance. The rights claimed by the respondent are *deriva-*

*tive* of the rights of the transferors, whose case it seeks to sponsor in this case; and if such a claim is recognized in this case it will *encourage* the *evasion* of tax by the *disguise* of a sale of property as a *reorganization,* as proposed in the case of *Pinellas Ice & Cold Storage Company* v. *Commissioner,* 287 U. S. 462. The respondent in this case should not assume a position that has for its *purpose tax evasion* by the taxpayer whose case it must plead and rely upon.

**Specification of Errors**

1. The Court below makes an unwarranted distinction between the *proprietary* and *direct* interest in property, and advances *form* above *substance* in a case where there is a *substantial shift* in the *proprietary interest* in property, within the meaning of Section 112(b) (5) of the Code (formerly Section 203(b) (4) of the Revenue Act of 1926), as defined by Section 29.112(b)(5)-1 of Regulations 111.

2. The Court below undertakes to define the term "reorganization" in a new and novel manner and give to it a meaning that is contrary to the intent of the statute, and in conflict with the meaning heretofore attributed to the term.

**Reasons for Granting the Writ**

1. The basic facts in this case, as well as the underlying provisions of Section 203(b) (4) of the Revenue Act of 1926, may not be differently considered and applied in this case than is required by the judgment of the Court in the case of *United Carbon Company* v. *Commissioner,* 90 F. (2d) 43. The parties hereto are in privity to the parties in the case of *United Carbon Company* v. *Commissioner, supra.*

2. The Court below proceeds in its opinion upon the assumption that two or more corporate persons may not be bound by the single plan they have entered into and com-

pleted as *one transaction,* within the meaning of Section 203(b) (4) of the Revenue Act of 1926, if the legal effect of such completed plan is a sale of property in which gain or loss must be recognized. An individual person, under similar circumstances, would be bound by the legal effect of such a completed plan under the principles of *Bodell* v. *Commissioner,* 154 F. (2d) 407; and in the case of *Von's Investment Company* v. *Commissioner,* 92 F. (2d) 861, it is held that where two or more completed transfers are to be treated as "one transaction" they may not be considered separately within the meaning of Section 112(b) (5) of the Internal Revenue Code—being identical with Section 203 (b) (4) of the Revenue Act of 1926.

3. A substantial shift of the proprietary interest in property is the legal equivalent of a break in the continuity of the ownership thereof in derogation of the term "reorganization"; and in the case of *Pinellas Ice & Cold Storage Company,* 287 U. S. 462, it is said that *reorganization,* as defined by Section 203(h)(1) of the Revenue Act of 1926 is lacking in a case where the continuity of a proprietary interest in property is shifted *substantially* by the completed transaction.

4. In the case of *Helvering* v. *Southwest Construction Corporation,* 315 U. S. 203, it is said that a completed transaction which shifts *substantially* the ownership of a proprietary interest in property cannot be classed as a *nontaxable reorganization.*

5. The following specific findings of fact, being a factual statement of the purpose of the written proposals accepted by each transferor, is legally conclusive that the two or more completed transfers were to be treated as "one trans-

action" so as to make the provisions of Section 203(b)(4) of the Revenue Act of 1926 applicable, viz:

> "The United Carbon Company was incorporated under the laws of the State of Delaware on the 19th day of February, 1925 for the purpose, among others, of carrying on the kind of business theretofore conducted by the various corporations and partnerships from whom the property was acquired, and to continue without interruption the production of oil and gas, the manufacture of carbon black, gasoline and other by-products of oil and gas. *The primary purpose of the new corporation was the unification of properties of each predecessor into a single ownership by United Carbon Company for a more efficient operation thereof.* The proposals referred to above were duly accepted by various corporations and a partnership, and were later ratified and accepted by the United Carbon Company at a meeting of its Board of Directors held on February 21, 1925. The properties designated in the proposals to be acquired by the United Carbon Company in exchange for preferred stock, common stock and cash were transferred to it as of February 14, 1925."

6. The foregoing finding of fact by the Court below makes the antecedent transaction in this case identical with the basic transaction considered in the case of *United Carbon Company* v. *Commissioner, supra.* In the case of *Von's Investment Company* v. *Commissioner, supra,* which follows the principles laid down in the case of *United Carbon Company* v. *Commissioner, supra,* it is said

> "Whether the two transfers here involved should or should not be treated as *one transaction* depends upon the intent and purpose with which they were made."

7. The intent and purpose of the written proposal as stated above conforms to the provisions of Section 203(b)(4), even though the transferors be corporate persons, and

since two or more transfers by different persons may constitute a *single transaction,* within the meaning of Section 203(b)(4) of the Revenue Act of 1926, it is impossible to reconcile the judgment of the court below with the applicable provisions of law and the cases of *United Carbon Company* v. *Commissioner, supra; Von's Investment Company* v. *Commissioner, supra; Bodell* v. *Commissioner, supra;* and *Mather & Company* v. *Commissioner,* 7 T. C. —, No. 165 (decided December 31, 1946). A correct determination with respect to the *pertinent* antecedent transaction in which gain or loss is to be recognized is controlling as to this petitioner, and it will control the judgment that the court below may enter herein.

8. In the case of *United Carbon Company* v. *Commissioner, supra,* it is said:

> "If, in accordance with this view, the tables above set out are examined, it will be seen that in a number of instances there was a substantial difference between the value of the asset possessed by the transferor before the exchange and the value of the stock received by him therein. Thus it appears that the Liberty Carbon Company received a gain of 21.93 per cent or $56,205.25, the Humphreys Carbon Company a gain of 12.17 per cent or $135,090.95, and the Central Carbon Company a gain of 11 per cent or $78,859.75; and on the other hand, that the Standard Carbon Company suffered a loss of 9.10 per cent or $124,655.82, and the Pelican Carbon Company a loss of 28.41 per cent or $134,800.16. *It cannot be said of any of these exchanges that the condition of the transferor was substantially the same after as before the exchange, and hence it appears that the condition of the statute was not met.*"

9. The completed single transaction involved in the case of *United Carbon Company* v. *Commissioner, supra,* is inescapably the *antecedent transaction* involved in this case.

It was passed upon by the court below, and the *Unity* of that transaction, as heretofore adjudicated in a proceeding between parties with whom the parties hereto stand in privity, appears to be conclusive. In the case of *Helvering* v. *Cement Investors,* 316 U. S. 577, it is held that two or more *corporate persons* can make transfers of property under the provisions of Section 112(b)(5) of the Internal Revenue Code (formerly Section 203(b)(4) of the Revenue Act of 1926), citing Treasury Regulations 94, Art. 112 (b)(5)-1, and *American Compress & Warehouse Company* v. *Bender,* 70 Fed. (2d) 655. The *disproportion* provisions of the statute may not be ignored merely because the two or more transferors are corporate persons to any greater extent than they are to be applied when the proportion is *substantially equal;* but the judgment of the court below flies in the teeth of the statute with respect to the legal effect of a *substantial disproportion.* The respondent cannot justify such a conflict, nor can the statute be correctly administered in the wake of such a judicial departure from its purpose and intent as adjudicated in the case of *United Carbon Company* v. *Commissioner, supra.* The law should be administered uniformly, and the respondent should not insist upon it being *confused* as proposed by the judgment herein.

10. In the case of *Helvering* v. *Cement Investors,* 316 U. S. 527, it is held that two or more creditors of a corporate person, who by operation of law "step in the shoes of stockholders," may cause their *proprietary interest* in the property of the corporation to be transferred to another corporation in exchange for its stock; but it is the requirement of the opinion of the Court of that case that the amount of stock received by each proprietary owner shall be *substantially in proportion* to the interest of each in the

property prior to the exchange. However, in this case it may be said that the two or more corporate persons were the "real transferors" of the property; but even so, the *substantial disproportion* which is conceded to exist as to them exists with respect to a *proprietary interest* of the stockholders of each in the property. The judgment of the Court in this case is in substantial conflict with the opinion of the Court in the above case, as applied by The Tax Court in the case of *Seiberling Rubber Company,* 8 T. C. — No. 57. The disproportion that may exist with respect to the proprietary interest of creditors of a corporation, who have "stepped into the shoes of stockholders," may not be overlooked under the principles of the case of *Helvering* v. *Cement Investors, supra.* However, in this case the Court below reaches a different conclusion with respect to a *substantial disproportion* that it concedes to exist with respect to the *proprietary interest of stockholders of the transferor corporate persons.* There should not be a different rule for *creditors* who have "stepped into the shoes of the stockholders" and the *stockholders themselves;* but the Court below appears to hold there is a difference. Such a conclusion is in direct conflict with the opinion of the Court in the case of *Helvering* v. *Cement Investors, supra.*

WHEREFORE, in order to settle the gravity of the questions presented herein as a proper and legal application of Section 112 (b) (5) of the Internal Revenue Code (formerly Section 203 (b) (4) of the Revenue Act of 1926); to settle the conflicts appearing herein; and to prevent tax evasion that appears probable under the judgment of the Court below, petitioner respectfully prays that a writ of certiorari may be issued herein to the end that this case may be reviewed and determined by this Court as provided by law.

That petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the said judgment of the Court of Claims of the United States be reversed.

Respectfully,

ROBERT A. LITTLETON,
*1021 Tower Building,*
*Washington, D. C.,*
*Attorney for Petitioner.*

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1946**

# No. 1311

OSCAR NELSON,

*Petitioner,*

*vs.*

THE UNITED STATES,

*Respondent*

## BRIEF IN SUPPORT OF PETITION

The Court below holds that the written proposal for the organization of the United Carbon Company is a single-whole contract with respect to the *promises* contained therein as regards (a) the purchase of inventoried properties for cash, and (b) the transfer of physical properties in exchange for stock by each of the 12 corporate persons and a partnership; but on the question of the two or more transfers of property in exchange for stock, in pursuance of the proposal, being "one transaction," within the meaning of Section 203 (b) (4) of the Revenue Act of 1926, the Court below treats them as *several transactions.*

The basic principle of law to be applied to the transfers, as provided in the proposal, is clearly stated in the case of

*Von's Investment Company* v. *Commissioner,* 92 Fed. (2d) 861, as follows:

> "The Board treated the two transfers as constituting a single transaction and held this to be a transaction described in section 112 (b) (5), and within the provisions of section 113 (a) (8). It accordingly held that the cost to petitioner of its 30,441 shares of Von's stock —the 7,426 shares acquired from Linda Von Der Ahe and the 23,015 shares acquired from Grocers—was the same as it was to petitioner's transferors.
>
> "Petitioner contends that the transfer by Linda Von Der Ahe and the transfer by Grocers were two transactions, the first of which was, and the second was not, a transaction described in section 112 (b) (5), and that to treat them both as one transaction was error, because the transfers were made by different persons and were not simultaneous. This fact is not controlling. Two transfers by different persons may constitute a single transaction, within the provisions of section 112 (b) (5) and section 113 (a) (8), and may do so, though made on different dates.
>
> "Whether the two transfers here involved should or should not be treated as one transaction *depends upon the intent and purpose with which they were made.* If, as seems likely, both transfers were made in furtherance of, and for the purpose of executing and putting into effect, the plan of reorganization embodied in the Merrill contract, they should, we think, be treated as one transaction and held to be a transaction described in section 112 (b) (5), notwithstanding they were made by different persons and were separated by an interval of five weeks."

The principle of law laid down in the case of *Von's Investment Company* v. *Commissioner, supra,* with respect to two or more transfers of property being *one transaction* appears to be supported by the following language used in

deciding a crucial question in the case of *United States* v. *Bethlehem Steel Corporation*, 315 U. S. 289, viz:

> "• • • Whether a number of promises constitute one contract or more than one is to be determined by inquiring 'whether the parties assented to all the promises as a single whole, so that there would have been no bargain whatever, if any promise or set of promises were struck out.' Willison on Contracts, Rev. ed. Par. 863 and cases there cited. The record makes it clear that each of the contracts here was assented to as a single whole, and that consummation of a bargain between the parties depended upon inclusion of the half-savings clause. • • •"

The provisions of Section 203 (b) (3) of the Revenue Act of 1926 would appear to be in absolute harmony with the meaning of Section 203 (b) (4) with respect to the *continuity* of a proprietary ownership in property, in the case of a transfer of same by two or more persons in exchange for stock; and in a case where the *unification* of the properties of two or more corporate persons takes the form of transfers that are substantially different from the commonly accepted meaning of the terms "merger" or "consolidation," the "proportional test" as to each transfer, as provided by Section 203 (b) (4), is *implicit* in the term "reorganization" as defined by Section 203 (b) (1) (A) or (B). (See *Pinellas Ice & Cold Storage Company* v. *Commissioner*, 287 U. S. 462.)

There is no inference that the transaction as a single-whole was to be carried out as *separate transactions* for the "intercorporate reorganization" of each transferor as provided by Section 203 (b) (3) of the Revenue Act of 1926, and the conclusion of the Court below that the transfers may be separated as a single-whole for the purpose of applying the term "reorganization" to only those trans-

ferors who transferred "substantially all of its assets" appears to be a subversion of Section 203 (b) of the Revenue Act of 1926.

In the case of *Commissioner* v. *Ashland Oil & R. Co.*, 99 Fed. (2d) 588, the separation of a "single transaction" as proposed by the Court below is *opposed* in the following language, viz:

> "• • • And without regard to whether the result is imposition or relief from taxation, the courts have recognized that where the essential nature of a transaction is acquisition of property, it will be viewed as a whole, and closely related steps will not be separated either at the instance of the taxpayer or the taxing authority. Prairie Oil & Gas Co. *v.* Motter, 10 Cir., 66 F. 2d 309; Tulsa Tribune Co. *v.* Commissioner, 10 Cir., 58 F. 2d 937, 940; Ahles Realty Corp. *v.* Commissioner, 2 Cir., 71 F. 2d 150; Helvering *v.* Security Savings Bank, 4 Cir., 72 F. 2d 874. The Prairie Oil & Gas Case, supra, bears to the case at bar a close resemblance. It is not to be distinguished by the fact that the issue there was whether there was a reorganization so as to fix the base for depletion deductions. The principle governing decision was that a single transaction must be considered singly and not be divided into its several steps, each to be considered as a separate transaction in respect to tax liability."

In the case of *Ahles Realty Company* v. *Commissioner*, 71 Fed. (2d) 150, the separation of a "single transaction" as proposed by the Court below is *opposed* in the following language, viz:

> "A single transaction may not be broken up into various elements to avoid a tax. West Texas Refining & Development Co. *v.* Comm'r., 68 Fed. (2d) 77 (C. C. A. 10); Prairie Oil & Gas Co. *v.* Motter, 66 F. (2d) 309 (C. C. A. 10)."

In the case of *Koppers Coal Company* v. *Commissioner*, 6 T. C. — No. 152, it is said:

> "There seems to be no doubt that if these several transactions were in fact merely steps in carrying out one definite preconceived purpose, the object sought and obtained must govern and the integrated steps used in effecting the desired result may not be treated separately for tax purposes either at the instance of the taxpayer or the taxing authority, or by agreement between both. *Commissioner* v. *Ashland Oil & Refining Company*, 99 Fed. (2d) 588."

The rule that two or more acts, steps or things—when done for a *primary single purpose*—are to be treated as *one transaction*, is made clear and convincing by the Court in the case of *United States* v. *Belmont*, 301 U. S. 324, in the following language:

> "The recognition, establishment of diplomatic relations, the assignment, and agreements with respect thereto, *were all parts of one transaction*, resulting in an international compact between two Governments."

The need for a clarification of the issue presented in this case is of public importance, and since the respondent in this case is taking a position as to the *basic transaction* that is directly opposed to the position taken by the Commissioner of Internal Revenue in the case of *United Carbon Company* v. *Commissioner, supra*, it is seen that there will be confusion and *loss of revenue* in the administration of Section 112 (a) (5) of the Code and Section 29.112 (b) (5)-1 of Regulations 111. No taxpayer should be required to guess at what position the Bureau of Internal Revenue will take upon a *given statement of facts* as the findings in this case are; and there should be uniformity in the decisions of the Courts as to the meaning of Section 112 (b) (5) of the Code (formerly Section 203 (b) (4) of the Revenue Act of 1926).

The judgment of the Court below purports to be based upon the meaning that the Court gives to the term "sub-

stantially all" as applied to a *class transfer* of property by two or more persons; but the real meaning of that term, as applied to the transfers in this case, is that those of the *transferring class of persons* who receive stock *substantially in proportion* to its interest in the property prior to the exchange are *exempted from the recognition* of gain or loss and those who do not receive stock substantially in proportion may *not be exempted.* (See *United Carbon Company* v. *Commissioner,* and *Bodell* v. *Commissioner, supra.*)

In the case of a single-whole transaction in which two or more corporate persons transfer property to a corporation in exchange for stock (as was done in this case) the standard prescribed for the nonrecognition of gain or loss is that the amount of stock received by each transferor be "substantially in proportion" to his interest in the property prior to the exchange; but in a case where there is only one corporate person making the transfer of property for stock of another corporation, the standard prescribed for the recognition of gain or loss is that the amount of stock received by the transferor shall represent "substantially all" of the property that the transferor owned prior to the exchange.

The conflict established by the judgment in this case as to two out of twelve corporate persons that make simultaneous transfers of property in exchange for stock within the meaning of Section 29.112(b) (5)-1 of Regulations 111 is that they may *evade* tax on the gain recognized notwithstanding the recognition of a *substantial disproportion* in the amount of stock received under the test prescribed in the cases of *United Carbon Company* v. *Commissioner,* and *Bodell* v. *Commissioner, supra* (R. 26).

It does not appear logical that the provisions of Section 203(b)(3) of the 1926 Act may be utilized as a basis for the *evasion* of tax on the gains recognized as to all of the transfers in the single-whole transaction of February 14, 1925 within the meaning of Section 203(b)(4) of said Act.

The *disproportion* test with respect to the amount of stock received by each transferor in the single-whole transaction is irrevocably established by the judgment of the Court in the case of *United Carbon Company* v. *Commissioner,* and the facts in this case with respect to the single-whole transaction of February 14, 1925 are not different from what they were established to be in the former case. The law has not been changed and the single-whole transaction may not be separated under the principles of *Von's Investment Company* v. *Commissioner,* and *Bodell* v. *Commissioner, supra.*

Because of the conceded *disproportion* with respect to the amount of stock received by each transferor in the single-whole transaction (R. 26) none of the transferors out of the twelve participating in the February 14, 1925 transaction have received stock that is "substantially in proportion" to *all of the property* each owned prior to the exchange, and the test of "substantially all" as required in the case of a *transfer* by a single corporate person within the meaning of Section 203(b)(3) may not be applied to the transfers of Natural Gas Products Company and Cosmos Carbon Company in this case except as a means of enabling them to *evade* tax on the gains that were adjudged to be recognizable in the February 14, 1925 transaction in the case of *United Carbon Company* v. *Commissioner, supra.* The conflict appears to be unreconcilable in view of the substantial shift that has occurred in the ownership of a proprietary interest in property (R. 26) (see *Helvering* v. *Southwest Construction Corporation, supra*).

Respectfully,

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*Attorney for Petitioner.*

# INDEX



## CITATIONS





746093—47——1

# In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1311

OSCAR NELSON, PETITIONER

*v.*

THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the court below (R. 25–32) is reported in 69 F. Supp. 336.

### JURISDICTION

The judgment of the court below was entered January 6, 1947. (R. 32.) On February 12, 1947, the petitioner filed a motion for a new trial which was overruled on March 3, 1947. (R. 32.) The petition for a writ of certiorari was filed May 2, 1947. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

## QUESTION PRESENTED

The question is whether the basis of shares of "A" corporation which petitioner received as a stockholder of "B" and "C" corporations without the surrender of shares of "B" and "C" is the allocated cost of the shares of "B" and "C". The answer depends upon whether the "A" shares were distributed pursuant to a tax-free reorganization within the meaning of Section 203 (h) (1) (A) of the Revenue Act of 1926 and Section 112 (i) (1) (A) of the Revenue Act of 1928.

## STATUTES INVOLVED

The applicable portions of the pertinent statutes are set forth in the Appendix, *infra*, pp. 14–17.

## STATEMENT

The special findings of fact of the Court of Claims (R. 11–25) may be summarized as follows:

In his return for the year 1929, petitioner reported a capital net gain from the sale of United Carbon Company preferred stock which had been acquired during the year 1925. From petitioner's records the Commissioner of Internal Revenue determined that part of the stock thus sold had been acquired by petitioner through distributions by the Cosmos Carbon Company and the Natural Gas Products Company, hereinafter referred to as Cosmos and Natural Gas, in proportion to his stockholdings in these two companies, and that the

distributions were made pursuant to a plan of reorganization without surrender of their stock in the distributing corporations and therefore the proper basis for computing capital gain was an allocated part of the original cost of petitioner's investment in the stock of Cosmos and Natural Gas. (R. 12–14.)

On January 19, 1938, petitioner filed a claim for refund for the year 1929, alleging therein that, of the preferred stock of the United Carbon Company sold by him during the year 1929, part was received as distributions by the Natural Gas and Cosmos; that the distributions were not made pursuant to the plan of reorganization; and that the basis of the computation of gain or loss upon the disposition thereof was the fair market value of the stock at the time it was received by him as distributions from Natural Gas and Cosmos. This claim for refund was disallowed in full by the Commissioner of Internal Revenue. (R. 14.)

Petitioner was president and general manager of Cosmos and Natural Gas. During the year 1923, the petitioner conceived the idea of uniting into one organization a number of other companies engaged in the production of oil and gas and the manufacture of carbon black and gasoline for the purpose of eliminating competition and the formation of a single sales agency for all. After discussing the matter of pooling the assets of various companies engaged in the manufacture

of carbon black with the general manager of the Liberty Carbon Company and the Louisiana Carbon Company, the officers of other companies and partnerships were approached concerning the proposition. A meeting of representatives of numerous companies and partnerships was held during the year 1924, and as a result thereof, appraisals of the properties of various companies and partnerships interested in the proposition were made. After the completion of the appraisals, it was decided that a new corporation would be formed to be known as the United Carbon Company. A committee for the incorporators of the United Carbon Company was formed, and such committee submitted to each of the various interested companies and partnerships similar written proposals. (R. 14–15.)

In the proposals the offer was made to acquire for cash all carbon black inventories and all supplies inventories used in the packing and shipping of carbon black. The proposals further provided that the United Carbon Company would acquire all of the property, real, personal and mixed, of the various corporations and partnerships, except cash, notes and accounts receivable, and inventories of carbon black and supplies in exchange for preferred stock of the United Carbon Company and voting trust certificates representing non-assessable shares of common stock of the United Carbon Company. It was further pro-

vided in the proposals that the transferors would continue to be liable for all their debts, and would protect and save harmless the United Carbon Company from all claims of every kind and character against such transferors. It was also the understanding of the transferors, including Cosmos and Natural Gas, that they would all join in a voting trust agreement covering the voting of the United Carbon Company's common stock for a period of five years. (R. 15–17.)

The United Carbon Company was incorporated on February 19, 1925, for the purpose of carrying on the kind of business theretofore conducted by the transferors. The primary purpose of the new corporation was the unification of properties of each predecessor into a single ownership for a more efficient operation thereof. The proposals were accepted by twelve corporations, including Cosmos and Natural Gas, and a partnership and the properties designated in the proposals were transferred to United Carbon Company as of February 14, 1925, in exchange for cash and preferred stock and voting trust certificates for common stock. (R. 17–18.)

Cosmos transferred approximately 91.6%, and Natural Gas 95.7% of their assets to the United Carbon Company in exchange for cash and preferred stock and voting trust certificates for common stocks. The assets retained were used to liquidate liabilities. Cosmos distributed to its

stockholders cash and preferred and voting trust certificates for common stock, and thereafter dissolved on August 2, 1927. Natural Gas distributed to its stockholders cash, preferred stock and voting trust certificates for common stock, and thereafter dissolved on June 24, 1926. (R. 18–23.)

## ARGUMENT

The only question in this case is the basis for measuring gain or loss on the petitioner's sale in 1929 of certain shares of preferred stock of the United Carbon Company which had been distributed to the petitioner as a stockholder of Cosmos and Natural Gas in 1925, 1926 and 1928. The Commissioner determined, and the Court of Claims held, that these shares were distributed to the petitioner pursuant to a reorganization (to which all of these corporatons were parties), the United Carbon shares being distributed by Cosmos and Natural Gas without the surrender of their own shares so that the distribution was tax-free under Section 203 (c) of the Revenue Act of 1926 (Appendix, *infra*) (identical with Section 112 (g) of the Revenue Act of 1928), and accordingly the basis of the Cosmos and Natural Gas shares should be allocated as between those shares and the United Carbon shares in accordance with the provisions of Section 113 (a) (9) of the Revenue Act of 1928. (Appendix, *infra.*) The petitioner makes no contention that these sections

would not be applicable if there was a reorganization. His contention is that there was no reorganization.

1. The decision of the court below holding that there was a reorganization within the meaning of Section 203 (h) (1) (A) of the Revenue Act of 1926 (Appendix, *infra*) (which is identical with Section 112 (i) (1) (A) of the Revenue Act of 1928) is clearly correct. There was a plan of reorganization whereby it was contemplated that Cosmos and Natural Gas and ten other corporations would transfer substantially all of their assets to a new corporation (United Carbon) in exchange for stock and cash.[1] Pursuant to this plan there was a transfer of substantially all of the assets of Natural Gas and Cosmos to the United Carbon Company in exchange for preferred stock and voting trust certificates for common stock.[2] This satisfied the continuity of interest requirement of a Clause A reorganization.

[1] One partnership was also included, but this case does not involve any question as to whether the assets of the partnership were acquired in a reorganization. (R. 18.)

[2] The bulk of the assets were acquired for stock (R. 19, 22), the common stock being placed in a voting trust as these corporations and other participating corporations agreed (R. 15–17). Cash was paid for inventories and supplies on hand. (R. 19, 22.) United Carbon did not assume the liabilities of Cosmos and Natural Gas, they retained certain assets, chiefly cash, accounts receivable and notes, and were not immediately dissolved. (R. 19, 20, 22.)

746093—47——2

*Helvering* v. *Minnesota Tea Co.*, 296 U. S. 378; *Nelson Co.* v. *Helvering*, 296 U. S. 374.

The petitioner's suggestion (Pet. 10–11) that there was no reorganization since no one of the transferor corporate persons or its stockholders held a controlling interest in the stock of the United Carbon Company immediately after the exchange, is without merit, for Clause A reorganizations as distinguished from Clause B reorganizations make no requirement as to control. *Nelson Co.* v. *Helvering, supra*, p. 377, and *Helvering* v. *Minnesota Tea Co., supra*, p. 384. Nor is it material that there was not a statutory merger or consolidation for Section 203 (h) (1) (A) of the Revenue Act of 1926 and Section 112 (i) (1) (A) of the Revenue Act of 1928 do not refer to statutory mergers and consolidations. See *Helvering* v. *Limestone Co.*, 315 U. S. 179. It is equally immaterial that the corporations were not immediately dissolved. *G. & K. Mfg. Co.* v. *Helvering*, 296 U. S. 389.

2. The principal contention of the petitioner is that where a number of corporations transfer their assets to a new company, the same proportional interests in the assets must be retained by those corporations or their stockholders, and that the decision in *United Carbon Co.* v. *Commissioner*, 90 F. 2d 43 (C. C. A. 4th), conclusively established that the same proportionate interests were not retained in this case.

It is obvious that Section 203 (h) (1) (A) of the Revenue Act of 1926 and Section 112 (i) (1) (A) of the Revenue Act of 1928 contain no requirement as to retention of proportionate interests in the transferred property where several corporations are involved in a reorganization. In fact this Court has held that the circumstance that the relation of the transferor to the assets conveyed is substantially changed is not material since this is not prohibited by the statute. *Helvering* v. *Minnesota Tea Co., supra; G. & K. Mfg. Co.* v. *Helvering, supra.*

The decision in *United Carbon Co.* v. *Commissioner, supra,* on which petitioner relies, does not support his position and is in no way controlling here. The sole question there considered by the Circuit Court of Appeals for the Fourth Circuit was whether Section 203 (b) (4) of the Revenue Act of 1926 (Appendix, *infra*), which does not deal with reorganizations but with transfers of property to controlled corporations, was applicable so that the United Carbon Company was required to use the transferor's basis in determining depreciation with respect to the transferred property. The court held that since proportionate interests were not retained in the transferred assets Section 203 (b) (4) had no application and hence the United Carbon Company was not precluded from using a stepped-up basis for determining depreciation by Section 204 (a) (8). It did not consider whether there was

a reorganization or basis provisions applicable in the case of reorganizations.

That the Circuit Court of Appeals for the Fourth Circuit did not consider whether or not there was a reorganization or whether or not the retention of proportionate proprietary interest was necessary for the purpose of a reorganization is made very clear by the later decision of the court in *Britt* v. *Commssioner,* 114 F. 2d 10. That case involved the question of basis of preferred stock of United Carbon Company which the taxpayer there involved had received in exchange for stock of the Liberty Carbon Company, one of the transferors of assets in the reorganization. In that case the Circuit Court of Appeals for the Fourth Circuit held that there was a reorganization and a nontaxable exchange of stock for stock so that the new stock took the basis of the old. In answer to the taxpayer's contention that the *United Carbon* decision controlled, the court stated that Section 203 (b) (3) of the Revenue Act of 1926 (Appendix, *infra*) correctly described the transaction and that section would have been applied in the *United Carbon* case had the Commissioner based his contention on that section instead of upon a subsection that did not fit the facts.[3]

[3] The Court of Claims also considered that the transactions here were tax-free to the corporation under Section 203 (b) (3) and (e) since the cash received was ultimately distributed to the stockholders.

Not only did the *United Carbon* case not involve any question as to a reorganization but the issue was the basis of the transferred property in the hands of the corporation and not, as here, the basis of the United Carbon stock in the hands of stockholders. The petitioner does not go so far as to contend that the decision in that case is *res judicata* here and such a contention was correctly rejected in the *Britt* case. Apart from the fact that different issues were involved in the *United Carbon* case, it is clear that a corporation and its stockholders are separate and distinct legal entities. *Dalton* v. *Bowers,* 287 U. S. 404; *United States* v. *Phellis,* 257 U. S. 156; *Eisner* v. *Macomber,* 252 U. S. 189; *Peterson* v. *Chicago, Rock Island & Pac. Ry.,* 205 U. S. 364; *Hornstein* v. *Kramer Bros. Freight Lines,* 133 F. 2d 143, 146 (C. C. A. 3d). In this action the petitioner is suing in his individual capacity as a stockholder and he cannot be bound by action taken by the United Carbon Company in an action on its own account.

3. The decision of the court below is not in conflict with the opinion of this Court in *Helvering* v. *Cement Investors,* 316 U. S. 527, as claimed by petitioner. There the bondholders, by reason of proceedings under Section 77B of the Bankruptcy Act, became the equitable owners of the properties of the debtor corporations. Subsequently the properties were transferred to a

new corporation by the trustee or title holder on behalf, and with the authority, of the creditors, and such creditors received stock and bonds of the new corporation in exchange. In the opinion of the Court, the transfer of the properties by the creditors to the new corporation qualified as a nontaxable exchange under Section 112 (b) (5) of the Revenue Act of 1936, which is similar to Section 203 (b) (4) of the Revenue Act of 1926. This was not an inter-corporate transaction pursuant to a plan of reorganization within the meaning of Section 112 (g) of the Revenue Act of 1936 (which does not contain Clause A as it appears in the Revenue Acts of 1926 and 1928), because the ownership of the properties had passed from the debtor corporation to the creditors, and the latter then became the transferors. In the *Cement Investors* case, the transaction did not qualify as a reorganization under the reorganization section or as a nontaxable exchange pursuant to a reorganization under Section 112 (b) (4) of the Revenue Act of 1936 but qualified as a nontaxable exchange under Section 112 (b) (5), whereas here the transaction does qualify under Section 203 (h) (1) (A) of the Revenue Act of 1926.

4. The petitioner asks this Court to review a number of questions concerning Section 203 (b) (4) which are in no way involved in this case and, on the issues which are involved, suggests no reason why further review is required.

## CONCLUSION

The petition for certiorari presents no question warranting review, and should therefore be denied.

Respectfully submitted.

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JUNE 1947.

# APPENDIX

## STATUTES INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 201. * * *

* * * * *

(c) Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under section 202, but shall be recognized only to the extent provided in section 203. * * *

* * * * *

SEC. 203. (a) Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 202, shall be recognized, except as hereinafter provided in this section.

(b) * * *

* * * * *

(3) No gain or loss shall be recognized if a corporation a party to reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(4) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange

for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

* * * * *

(c) If there is distributed, in pursuance of a plan of reorganization, to a shareholder in a corporation a party to the reorganization, stock or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such a corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

* * * * *

(h) As used in this section and sections 201 and 204—

(1) The term "reorganization" means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (B) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (C) a recapitalization, or (D) a mere change in identity, form, or place of organization, however effected.

(2) The term a "party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

* * * * *

SEC. 286. This title shall take effect as of January 1, 1925, except that section 257 and sections 271 to 285, inclusive, and this section, shall take effect on the enactment of this Act.

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 113. BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Property acquired after February 28, 1913.*—The basis for determining the gain or loss from the sale or other disposition of property acquired after February 28, 1913, shall be the cost of such property; except that—

* * * * *

(9) *Tax-free distributions.*—If the property consists of stock or securities distributed after December 31, 1923, to a taxpayer in connection with a transaction described in section 112 (g), the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock or securities distributed;

* * * * *

Section 112 (b) (4) and (5) of the Revenue Act of 1928 are identical with Section 203 (b) (3)

and (4), respectively, of the Revenue Act of 1926; Section 112 (g) is identical with Section 203 (c) of the Revenue Act of 1926, and Section 112 (i) is identical with Section 203 (h) of the Revenue Act of 1926.

U. S. GOVERNMENT PRINTING OFFICE: 1947